IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6576 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAKESH RAJNIKANT VITHLANI

Versus

COMMISSIONER OF POLICE

Appearance:

MR YOGESH S LAKHANI for Petitioner

Mr.D.N.Patel, Ld. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 18/02/2000

ORAL JUDGEMENT

The detenu has been detained by the Commissioner of Police, Rajkot respondent no.1 herein. The respondent no.1 passed a detention order on 2.7.1999 under the provisions contained in Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA" for short), a copy of which is placed on record vide

Annexure A.

2. The grounds of detention which are served upon the detenu are placed on record vide Annexure B dated 2.7.1999. The detenu and his 10 other associates were found by the Detaining Authority in habit of indulging in preparing bogus documents of different denominations such as stamp paper, Indira Vikas Patra, Revenue stamps and stamps used for share transfer. The detenu was engaged in offence of breach of trust and cheating. It is pointed out that on or about 24.12.99, the offence was committed which has been registered vide C.R.No. 708 of 1999 for offences punishable under the provisions of Penal Code such as 406, 420, 467, 468, 471, 472, 473, 474, 489, (A) (B) (C), 255, 256, 257, 258, 259, 120(B). The stamps involving lacs of rupees appear to have been seized during the investigation. During the investigation, it appears that the printing material i.e. Printing Press, Mercidise Car, stamp of huge amount including Vikas Patra were found. The Police also seized Mobile phone etc. The Detaining Authority also arrived at a finding that the detenu with his associates were indulged in stamps issued by the Government. The Detaining Authority has observed in the order that the documents seized from the detenu are as good as currency notes. The amount received from sale of stamp etc. would be deposited in the Government treasury. It is a source of income of the government and the detenu like the present one engaged in such nefarious activities is not only causing loss to the Revenue but would create difficulties for innocent citizens who will buy the stamp papers, Indira Vikas Patra, revenue stamps or the share transfer stamps. The persons not knowing will buy the stamps and the use will invite problems. The Court shall consider these aspects while releasing the accused on bail. The Court granting bail is required to take into consideration that whether the offence is against the society at large or against an individual. The Court is required to examine the nature of the offence and the circumstances in which the offence has been committed. When an offence is committed with a calculated mind with a view to get money from innocent persons, it is required to be viewed very seriously. Innocent persons buying the stamp paper, revenue stamp and Indira Vikas Patra would buy it not knowing that it is forged one or bogus one. If that is detected later on, he will invite serious problems. Even the authorised agents of the Government Treasury, both are adversely affected by these nefarious activities of the detenu and others. The Detaining Authority has found that the detenu was engaged in 2 offences which are reflected in the grounds of detention

and in all the loss has been caused to the Revenue to the extent of Rs.78,10,703/-. The Ld. AGP appearing in this matter is making a grievance that the Court releasing the accused on bail is not considering these aspects very seriously and in a very light manner, the accused are released on bail. The Detaining Authority has relied on the statements of independent witnesses. it is indicated in the grounds of detention that on 24.12.1998 bogus revenue stamps totalling to Rs.92,300/- were recovered from the possession of Deepak and Bipinbhai Parekh, close associates of the detenu. The Detaining Authority has indicated several instances and was satisfied that the detenu is required to be detained. In 11 paras, the Detaining Authority has considered the statement of various persons indicating the part played by either the detenu or his associates.

3. In the instant case, it is sorry state of affairs that even the State has not filed any affidavit controverting the ground g of the petition which reads as under:-

> "g. It is submitted that the petitioner made a representation through the Jail Authority on 21.7.1999 to (i) Commissioner of Police, Rajkot (ii) The Dy. Secretary, Home Department, Gandhinagar, (iii)The Chairman, PASA Advisory Board, by registered postal A.D., the said representation is not considered by any of the authorities, if the said representation is considered then, there is delay in deciding the same. If the representation of the petitioner is at all decided then the decision of the authority is not communicated to the petitioner. If there is any communication then there is a delay in communication also and therefore, also the order of detention is liable to be quashed and set aside."

If the representation made by the detenu is not disposed of in accordance with law, it goes without saying that the continued detention is required to be held as bad and illegal. The Court must be satisfied that the person who is detained in jail is detained by following the procedure prescribed by the Law and even continued detention is in accordance to the provisions of the law.

4. In view of what is stated above, this Court has no other alternative but to say that the continued detention is bad and illegal and hence the detenu shall be released forthwith, if not required in any other case. Rule made absolute with no orders as to costs.

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